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Court : Patna

Decided On : May-21-2009

Judge : Dharnidhar Jha, J.

Appellant : Ashok Kumar Singh and ors.

Respondent : Shanti Devi and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Dharnidhar Jha, J.

1. The present revision petition raises an issue of law as to whether any Subordinate Judge, other than Subordinate Judge-I, of a District could be treated as the 'Principal Civil Court of original jurisdiction in the District' as appearing in the definition of the term 'Court' in Section 2(e) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act).

2. It appears that a Partition Suit bearing No. 94 of 1981 was filed by late Bhupal Singh and others in the Court of Subordinate Judge-I, Muzaffarpur, for partition of Schedule 1 and 2 properties as per description in the plaint in which late Raj Narain Singh was the defendant and on account of whose death his legal representatives were brought on record. It appears from the impugned order that

the parties decided to opt for arbitration and appointed their own arbitrators and placed the fact of going to arbitration by appointing arbitrators through several petitions filed before the Court which was seized with the above noted partition suit. It appears that the suit was pending, before Sub-ordinate Judge-II, Muzaffarpur. Its proceedings were stayed by the Presiding Officer of the Court in the light of information, given to it that the parties had submitted their, disputes by mutual agreement to a set of arbitrators. One of the arbitrators died during the pendency of the arbitration proceeding, but the same was continued by the remaining arbitrators and, accordingly, they passed an award and submitted the same before the Court of Sub-ordinate Judge-I, Muzaffarpur, on 24-5-1994. The parties were handed out the copies of the award on 4-6-1999.

3. Admittedly, no objection was raised to the award or any of its clauses before the Subordinate Judge-II. However, Miscellaneous Case bearing No. 13 of 1999 was filed by the petitioners before Sub-ordinate Judge-I, Muzaffarpur, raising the objection to the award passed by the arbitrators in Partition Suit No. 94 of 1981 with a prayer to reject the award. Because the Court did not receive any objection under Section 34 of the Act from any of the parties, it accepted the award and the same was put to execution by registering Execution, Case No. 2 of 2002 for enforcing the award in the light of Section 36 of the Act as the provision required the award to be enforced as if it were the decree of a Civil Court. The execution proceedings were initiated by Subordinate Judge-II, Muzaffarpur, in the above noted execution case. Thereafter, the petitioners raised their objection on disposal of the execution case pointing out to the Court of Subordinate Judge-II, Muzaffarpur, that they had already filed a Miscellaneous case bearing No. 13 of 1999 before Subordinate Judge-I, Muzaffarpur, and as the objections were awaiting disposal in the light of the provision of Section 34 of the Act, the award was not final having taken the shape of the decree of a civil Court so as to be enforced under the Code of Civil Procedure.

4. The Court below rejected the prayer of the petitioners on the grounds that the objection had to be raised before the Court of Subordinate Judge-II, Muzaffarpur, to whom the award was submitted and that too within the stipulated period of three months as per the provision of Section 34 of the Act and that had not been done

and instead a Miscellaneous case was filed before another Court, i.e., Subordinate Judge-I, Muzaffarpur. The above order is being challenged in the present revision petition.

5. At the very outset, I want to point out that the very revision petition is itself not maintainable inasmuch as the Act as passed by the legislature is a complete code in itself (kindly see Chapter I, etc.) under the special nature of the aims and objects of the Act which is basically to develop a culture of resolution of dispute through methods other than conventional ones. In other words, the very Act aims at excluding litigations to be presented in regular Courts and instead encouraging resolution of disputes through arbitral proceedings. There are some special provisions put into the Act as the proceedings could not be conceived in the conventional methods of resolution of disputes by adjudication. In fact, it is not an adjudication under the ordinary system known as adversarial system as we have adopted for ourselves, rather, it makes a departure from that conventional system of rendering justice and on that account gives liberties to the parties either to opt for arbitration even after having brought the lis before a Court which could have the jurisdiction to try issues and settle the dispute or even before the litigation is brought before a Court, by appointing an arbitrator or a set of arbitrators for resolution of their disputes. As the forum is completely different from the conventional civil Courts, the procedure as created by the Act by its different provisions is also completely new which could not even be imagined in the adversarial system of administration of justice. The parties have been granted liberties to act on their own to submit their differences to arbitrators by fixing their own terms of references and setting down the procedure by drafting their own rules for arbitration (Section 2). It is true that written agreement of arbitration has been made the basis for referring the dispute to arbitral proceedings, but that part of agreement has been expanded to such an extent as even correspondences between the parties could be treated to set down the terms of agreement which could be appearing in correspondences among them earlier entered into in respect of the subject-matter of dispute. Even enactments, other than the Act, have to be treated as agreements if there was an arbitration provision in it and contract to that effect with some exception. (Section 2(4)). This could be the reason that nowhere in the whole of the Act there is any whisper that the proceedings or any part of it

could be carried out as per the provisions of the CPC except Section 36 of the Act which is, as indicated above, a provision on enforcement of the award. Otherwise, many provisions of the Act like Sections 45 and 54 have non-obstante clauses which exclude the application of the CPC. There is specific provision under Section 19 of the Act which completely excludes the CPC and the Indian Evidence Act as regards the rules of procedure for arbitration tribunals and vests enormous unforeseen powers in that behalf to them.

6. Section 4 of the CPC directs that in the absence of any provision to, the contrary, nothing in the Code shall be deemed to limit or otherwise affect any special or local law in force or any special jurisdiction or power conferred or any specific form of procedure prescribed, by or under any other law for the time being in force. An exception appears made to the above rule only in cases of recovery of rent of agricultural land from the produce of such land by the land holder or landlord. Thus, the provision of the CPC could not be applied to any of the proceedings of the Act and likewise no action could be brought to change any order passed under the Act by the Court as per the provision of Section 2(e) of the Act before the High Court specially in view of the fact that there is a specific provision of appeal under Section 37 of the Act which directs filing of appeal against many orders including an order setting aside or refusing to set aside, an arbitral award under Section 34 of the Act. When there is a specific provision under Section 37(1)(b) of the Act for challenging the vires of the order of the present nature it is completely out of jurisdiction for this Court to entertain revision petition because that will be allowing the litigants to bypass the specific provision under the special statute which could not be allowed to be done in the light of the savings contained in Section 4(1) of the CPC.

7. However, considering the importance of the issue, I have chosen to decide whether the Court of Subordinate Judge who is not the Subordinate Judge-I of a District could be the 'Principal Civil Court of original jurisdiction in the District.' It is well settled by the decision of this Court in the case of Mohd. Sadiq v. State of Bihar 2000 (4) PLJR 814 that the Court of Subordinate Judge, is the Principal Court of original jurisdiction in the District. That point has not been raised before me. The point is whether any Court of Subordinate Judge in the District, other than

that of Subordinate Judge-I, could also be covered by the above term 'Court' as appearing in Section 2(e) of the Act.

8. As pointed out by this Court in the decision of Mohd. Sadiq (*supra*). The Bengal, Agra and Assam Civil Courts (Act No. 12 of 1997) provides classes of civil Courts by virtue of its Section 3. As may appear from the provision of the above section, the Court of District Judge, the Court of Additional Judge, the Court of Subordinate Judge and the Court of Munsif are the civil Courts established and classified by the above Act No. 12 of 1987. As may appear from the provision of Section 13 of the said Act, the State Government may by notification in the official Gazette fix or alter the local limit of any civil Court under the Act. Sub-section (2) of Section 13 indicates that if there are more than two Courts of Subordinate Judges which are assigned the works of the same local jurisdiction then the District Judge shall have to assign to each of them such civil business as are cognizable by the Sub-ordinate Judge and that order shall be subject to any general or special order of the High Court. Thus, it is clear from Section 13 that there has always to be a single local area and single Court area but there could be more than one Subordinate Judges who could be exercising their jurisdictions in that local area in respect of the same Court independently of each other as per order of assignment of cases passed by the District Judge. This provision goes to indicate that as soon as the District Judge assigns the civil business in respect of the same local area cognizable by the Subordinate Judge to all the Sub-ordinate Judges, each of them becomes a Sub-ordinate Judge independently of other Sub-ordinate Judges to exercise his exclusive jurisdiction in taking cognizance, hearing and deciding that particular suit in the same local area. Thus, it could not be said that any officer who could be in addition to the officer who is appointed and designated as Sub-ordinate Judge I could be the only Sub-ordinate Judge of the District as indicated above. Sub-ordinate Judges exercise jurisdiction in the same local area as if each of them were the only Court in respect of that particular case which he hears.

9. The above view of mine gets support from the very Act No. 12 of 1997. By virtue of Section 4 under which the State Government has the power to alter the number of District Judge, Sub-ordinate Judge and Munsif earlier fixed by it. This also indicates that there could be one or two Sub-ordinate Judges who could be

exercising the same jurisdiction independently of the other in the same local area.

10. This view of mine gets support from the decision cited by learned Counsel for the petitioners which is reported in AIR 1947 Patna 54, Emperor v. Balakrishna Pal. The above topic appears discussed in paragraph 4 of the decision, of course, in a different context, and I am tempted to be profited by quoting that particular paragraph which is as follows:

Sections 3 and 13, Bengal, Agra and Assam Civil Courts Act, 1887, clearly show that the Court of the Munsif under the Act is one Court though there might be several officers working as Munsifs in the same District. Where there are two or more Munsifs having the same local jurisdiction the District Judge assigns, under Sub-section (2). Section 13 to each of them such civil business as is cognizable by that Court. Each officer does not constitute a separate and different Court, though Munsifs posted to one district are very often called first, second or additional Munsif. The use of such expressions as 'the first Munsifs Court,' the 'second Munsifs Court,' etc. is due to a confusion between the 'Court' and officers' attached to it.

(underlining mine).

11. The importance of the observation made above lies in the fact that there may be one Court of Munsif or a Sub-ordinate Judge so to say in context of this case, but the additional hands posted as Munsifs or Sub-ordinate Judges exercise their jurisdiction in the same Court and as such have to be treated the same Court. This is more clear if one considers the definition of 'Court' in Section 2(e) of the Act. It is simultaneously an inclusive and exclusive definition that 'Court' means the Principal Civil Court of original jurisdiction in a district including the High Court when it exercises its original jurisdiction. But simply being the Principal Civil Court of the district is not enough. It must have the jurisdiction to decide the question forming the subject-matter of arbitration if the same had been the subject-matter of a suit. The Court as appearing from above may not be enough to be treated as the 'Court' as per the definition of term by Section 2(2) if it is a Court inferior to the Principal Civil Court. The above definition thus excludes any Court from the ambit of the 'Principal Civil Court of original jurisdiction' if it is inferior to the said principal

Court. At the same time by the above language it includes those Courts within the term 'Court' which enjoy co-ordinate jurisdictions. Each and every of such Courts must exercise jurisdiction in such local area as could be done by the Chief Court as discussed earlier while noticing the provisions of Act No. 12 of 1987. All Sub-ordinate Judges of a district enjoy equal powers in the same local area and have the same pecuniary jurisdiction. They are not Courts inferior to the Sub-ordinate Judge I of the district and as such each of them could be the Principal Civil Court of original jurisdiction.

12. Yet another decision reported in AIR 1934 Patna 192, Chandmal Marwari v. Raja Sahib Prasad Singh also appears taking a similar view, of course in a different context, of execution of a decree by a Court different from one which heard the suit and passed the decree and in the meantime a new Court being created after creating a new local area and places of sitting for the two Sub-ordinate Judges. The third decision cited by learned Counsel for the petitioners is reported in 2004 (2) PUR 16 (SC) : AIR 2005 SC 1514, National Aluminum Co. Ltd. v. Pressteel and Fabrics Pvt. Ltd. The Supreme Court was discussing the issue as to what could be the 'Court' before which an objection was to be filed under Section 34 of the Act. In that connection it was noted that it could be the Principal Civil Court of the District. Nowhere in the judgment it has been decided that any Subordinate Judge, who is not Sub-ordinate Judge-I of the District could not be the 'Principal Civil Court of original jurisdiction' for the purpose of Sections 2(e), 34 and 36 of the Act.

13. In view of the above discussions, I have no hesitation in holding that the Sub-ordinate Judge who was seized with hearing of Execution case No. 2 of 2002 was the 'Principal Civil Court of original jurisdiction' as regards Partition Suit No. 94 of 1981 and if at all any of the parties could have any objection to the award which was passed by the arbitrators as per the agreement of the parties connected with the disputed properties and submitted to the Sub-ordinate Judge-II by the arbitrators then it had to be filed before the Court of Sub-ordinate Judge-II, Muzaffarpur. The question framed at the very outset is answered accordingly.

As pointed out above, the order was appealable as indicated earlier under Section 37 of the Act. This revision petition is itself not maintainable before this Court. It is, accordingly, dismissed but under the facts and circumstances of the case, without any order as to costs.

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